IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE Dr.JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 22222 of 2004

Between:

M.Somasekhar S/o.N.Pedda Gangulappa, 26 years,
Gorantla, (PO) Anantapur District.

....PETITIONER

AND

1 The District Collector and Magistrate Anantapur.
2 The Government of Andhra Pradesh represented by its Chief

Secretary, Secretariat, Hyderabad.
3 The Superintendent Central Prison, Cherlapally, R.R.District.

..RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Habeas Corpus directing the respondents to produce Boya Maraganikunta Gangulappa who is now detained in Central Jail, Cherlapalli before this Hon'ble Court and release him forthwith after declaring his detention as illegal and void and pass.

Counsel for the Petitioner:MR. C. PRAVEEN KUMAR

Counsel for the Respondent No.: THE ADVOCATE GENERAL

The Court made the following :

ORDER: (per the Hon'ble Dr.Justice G. Yethirajulu)

1. This writ petition is filed by the nephew of the detenu Boya Maraganakunta Gangulappa seeking to issue a writ of Habeas Corpus directing the respondents to cause production of the detenu before this court and to release him forthwith after declaring his detention as illegal and void.

2. On 18-9-2004 the Collector and District Magistrate, Anantapur, who is the first respondent herein, passed an order of detention under Section 3 (2) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug offenders, Goondas, Immoral Traffic offenders and Land Grabbers Act, 1986 (Act 1 of 1986) (hereinafter referred to as 'the Act' for the sake of brevity) on satisfying that the detenu is habituated to commit dangerous offences like 'goonda' activities in violation of laws as defined under Section 2 (g) of the Act and it is necessary to make an order invoking powers under Section 3 (2) of the Act directing the detenu to be detained in Central Prison, Chenchalguda, Hyderabad to prevent him from acting in any manner prejudicial to the maintenance of public order. Accordingly, the detenu was kept in detention w.e.f. 18-9-2004. The first respondent passed the order of detention on the basis of seven grounds. The learned Senior Advocate, Sri C. Padmanabha Reddy, contended that

the first respondent passed the detention order on vague, irrelevant and non-existing grounds and in violation of the provisions of the Constitution, therefore, the order of detention is liable to be set aside. The learned counsel challenged the detention order on four grounds viz., 1) incidents 1 and 2 referred occurred in the year 1992 are not proximate and they are remote; 2) incidents 3 and 4 are of the year 2001. They are also stale incidents and cannot be said to be proximate to the date of the detention order passed in September 2004; 3) incident No.5 is also a stale incident as it occurred in November 2002, as such it cannot be said to be proximate for passing the order of detention; and 4) under incident No.7 the detenu was released on bail. He submitted that the facts regarding the stage of the cases covered by incident Nos.1 to 5 were not placed before the detaining authority before passing the detention order. The learned senior counsel further submitted that even if one ground is vague, irrelevant or not existing, the entire detention order has to go, therefore, requested to pass appropriate orders setting aside the detention order and to release the detenu forthwith.

3. The learned Advocate General, on the other hand, submitted that the detenu is habituated to commit series of offences and the instances mentioned in the grounds of detention clearly indicate that the detenu is a “goonda” and the detaining authority after taking into considering the instances mentioned in the grounds of detention arrived at a conclusion that this is a fit case for ordering detention of the detenu under the Act. The learned Advocate General further submitted that since the detenu is a “goonda”, it does not matter even if two or three remote and stale incidents are included in the grounds. They will not affect the other grounds, therefore, the order passed by the first respondent is sustainable under law.

4. Before adverting to the merits of the case, we wish to refer to the relevant provisions of the Act. Section 2 (g) of the Act defines “goonda” and it reads as follows:

"goonda" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code.

5. Since the allegation is that the detenu was a "goonda", it has to be seen whether he can be brought within the definition of 'goonda'.

6. Section 3 of the Act empowers the Government to make orders detaining certain persons and it reads as follows:

3.Power to make orders detaining certain persons:

1. The Government may, if satisfied with respect to any bootlegger, dacoit, drug offender, goonda, immoral traffic offender or land grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

2. If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1) exercise the powers conferred by the said sub-section.

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period, from time to time by, any period not exceeding three months at any one time.

3. When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government.

7. I n **Kamalakar Prasad v. State of M.P.** the detaining authority passed a detention order wherein some of the grounds were found to be too remote and not proximate to the order of detention. The Supreme Court while holding that such detention order is not sustainable observed as follows:

12. The first two incidents which are of 1978 and 1980 are mentioned as grounds of detention in the order dated 6-5-1983. There can be no doubt that these grounds especially ground No. 1 relating to an incident of 1978 are too remote and not

proximate to the order of detention. It is not open to the Detaining Authority to pick up an old and stale incident and hold it as the basis of an order of detention under Section 3 (2) of the Act. Nor it is open to the Detaining Authority to contend that it has been mentioned only to show that the detenu has a tendency to create problems resulting in disturbance to public order, for as a matter of fact it has been mentioned as a ground of detention. Now there is no provision in the National Security Act, 1980 similar to Section 5-A of the Conservation of Foreign Exchange and prevention of Smuggling Activities Act, 1974 which says that where a person has been detained in pursuance of an order of detention under sub-section (1) of Sec. 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, non-relevant, not connected or not proximately connected with such persons or invalid for any other reason and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of S. 3 with reference to the remaining ground or grounds and made the order of detention and (b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds. Therefore in the present case it cannot be postulated what view would have been taken by the Detaining Authority about the need to detain the petitioner under Section 3(2) of the Act if he had not taken into account the stale and not proximate grounds 1 and 2 into consideration in arriving at the subjective satisfaction. We are, therefore, of the opinion that the petitioner's detention is unsustainable in law.

8. Following the above decision in **Kamalakar Prasad** (1 supra), a Division Bench (presided by Bilal Nazki, J) delivered a judgment in **M.Ashok Goud v. Collector and Dist. Magistrate, Nizamabad**. In the case covered by the above judgment, the order of detention was passed in September 2001. Out of four grounds on which the detention was made, grounds 1 and 2 relate to crimes of October 1998 and January 1999. The Division Bench therefore held as follows:

6. In view of the position of law laid down by the Supreme Court and having found that two of the grounds are too remote, it cannot be assumed or postulated what view could have been taken by the District Magistrate had he not considered these two grounds before ordering the detention. The detention cannot be upheld.

9. From the above pronouncements of the Supreme Court and this Court, it is clear that if any of the grounds mentioned in the order of detention are not proximate, vague, irrelevant, remote or stale, then such detention order cannot sustain.

10. The first respondent passed the detention order basing on the following incidents:

1. Incident No.1 relates to Crime No.39 of 1992 of Gorantla P.S registered for the offence committed on of 5/6-5-1992.

2. Incident No.2 relates to Crime No.36 of 1992 registered under Section 397 IPC of Bukkapatnam P.S. for the offence committed on 3/4-6-1992.

3. Incident No.3 relates to Crime No.250 of 2001 registered under Section 379 IPC of Bagepalli P.S. alleging that the offence was committed on 17-12-2001.

4. Incident No.4 relates to Crime No.6 of 2002 registered under Sections 379 and 411 IPC of Chilamathur P.S. on 26-12-2001.

5. Incident No.5 relates to Crime No.170 of 2002 registered under Section 379 IPC of Vijayapuri P.S., Karnataka State for the offence committed on 13-11-2002

6. Incident No.6 relates to Crime No.92 of 2003 registered for the offenes committed on 13-11-2003 under Sections 302 and 201 read with 34 IPC of Gorantla P.S.

7. Incident No.7 relates to Crime No.87 of 2004 registered for the offence committed under Sections 457 and 380 IPC of Gorantla P.S. on 1/2-8-2004.

11. The learned senior counsel appearing on behalf of the petitioner argued that since all the grounds were taken into consideration by the detaining authority, the first five grounds being stale and ground No.7 irrelevant, it will not be appropriate for this court to come to a conclusion

as to what weighed with the detaining authority to satisfy that the detenu is liable to be detained under the Act.

12. But there is a latest development in the Law through the latest pronouncement of the Supreme Court. In **Collector and District Magistrate, W.G. District, Eluru, Andhra Pradesh and others v. Sangala Kondamma**, which was delivered on 9-12-2004 in Criminal Appeal No.1451 of 2004 arising out of S.L.P.(Cri) No.5341 of 2003, the Supreme Court while dealing with the provisions of Act 1 of 1986 held that if the incidents are proximate to each other, the fact that initial few incidents are not proximate to the order of detention would not make the order of detention bad. The Supreme Court further held as follows:

> The detention order being one based on subjective satisfaction of the detaining authority, it will not be possible for a Court to find out how far the stale incident influenced the mind of the detaining authority, hence the consideration of such a stale incident along with some other proximate incidents certainly will vitiate the subjective satisfaction of the detaining authority. From the preamble, statements and objects of the Act it is noticed that it aims to prevent a person from indulging in certain illegal activities enumerated therein by his preventive detention. For this purpose, the detaining authority must be satisfied that the proposed detenu is likely to indulge in such illegal activities in future also. If the facts placed before the detaining authority are proximate to each other, and the last of the fact mentioned in proximate to the order of detention, then the early incidents cannot be treated as stale and the detention order cannot be set aside.
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> In the case covered by the above decision, the detenu was involved in five incidents of "bootlegging" from 10-1-2001 to 25-10-2002 which are reasonably proximate to each other and the last of the incidents being proximate to the order of detention. The High Court was not justified in treating the two incidents of 17-1-2000 and 10-1-2000 as stale by taking them in isolation. The five incidents recorded in the order of detention being proximate enough to each other shows the continuity of the acts of the detenu. In such a fact situation, the High Court erred in coming to the conclusion that two of the five grounds being not proximate to the order of detention, the detention order was passed on stale grounds.

13. The Supreme Court further observed that while it can be stated that the incidents of 17-1-2000 and 10-1-2001 could not by themselves

have been sufficient grounds to detain the detenu, but would certainly become a relevant material along with other three grounds dated 3-2-2002, 6-10-2002 and 25-10-2002 to come to the conclusion that there is a need for detaining the detenu to prevent him from indulging in similar activities in future.

14. The above judgment of the Supreme Court is giving a further direction that if the incidents are proximate to each other and the last being proximate to the order of detention, the early incidents cannot be treated as stale and detention order cannot be set aside.

15. In the case on hand, the detaining authority relied on seven incidents. Incident Nos.1 and 2 are of the year 1992. Incident Nos.3 and 4 are of the year 2001, incident No.5 of 2002. Incident No.6 of 2003 and incident No.7 is of the year 2004. Though incident No.7 is proximate to the date of the order of detention, and incidents 3 to 7 are proximate to each other, the incidents 1 and 2 are not proximate to incident No.3. The latest law is that if one of the incidents mentioned in the grounds of detention is not proximate to the dates of other incidents or the detention order, the order of detention cannot sustain. The order of detention passed by the first respondent indicates that all the grounds were taken into consideration at the time of satisfying that there are sufficient grounds for ordering detention. Had the incidents 1 and 2 not been incorporated in the grounds of detention, the detaining authority would have arrived at a different conclusion. But, in view of the inclusion of incidents 1 and 2 in the grounds of detention, the detaining authority came to a conclusion that this is a fit case for detention. We therefore hold that the order of detention is not sustainable in the eye of law. The writ petition is accordingly allowed. The order of detention dated 18-9-2004 is quashed. The concerned authorities are directed to release the detenu forthwith if he is not required in any other crime.

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(BILAL NAZKI, J)

(Dr.G. YETHIRAJULU, J)

30th December 2004.

Note:

L.R. copy be marked.

Svs

To

1 The District Collector and Magistrate Anantapur.
2 The Government of Andhra Pradesh represented by its Chief

Secretary, Secretariat, Hyderabad.
3 The Superintendent Central Prison, Cherlapally, R.R.District.

4. 2 CCs to the Advocate General, High Court Buildings, Hyderabad.

5. 2 CD copies.